



Sen. Don Harmon

Filed: 3/15/2011

09700SB2141sam001

LRB097 10174 AJ0 52338 a

1 AMENDMENT TO SENATE BILL 2141

2 AMENDMENT NO. _____. Amend Senate Bill 2141 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-701 and by adding Section 2-701.5 as
6 follows:

7 (735 ILCS 5/2-701) (from Ch. 110, par. 2-701)

8 Sec. 2-701. Declaratory judgments. (a) No action or
9 proceeding is open to objection on the ground that a merely
10 declaratory judgment or order is sought thereby. The court may,
11 in cases of actual controversy, make binding declarations of
12 rights, having the force of final judgments, whether or not any
13 consequential relief is or could be claimed, including the
14 determination, at the instance of anyone interested in the
15 controversy, of the construction of any statute, municipal
16 ordinance, or other governmental regulation, or of any deed,

1 will, contract or other written instrument, and a declaration
2 of the rights of the parties interested. The foregoing
3 enumeration does not exclude other cases of actual controversy.
4 Except as provided for in Section 2-701.5, the ~~The~~ court shall
5 refuse to enter a declaratory judgment or order, if it appears
6 that the judgment or order, would not terminate the controversy
7 or some part thereof, giving rise to the proceeding. In no
8 event shall the court entertain any action or proceeding for a
9 declaratory judgment or order involving any political question
10 where the defendant is a State officer whose election is
11 provided for by the Constitution; however, nothing herein shall
12 prevent the court from entertaining any such action or
13 proceeding for a declaratory judgment or order if such question
14 also involves a constitutional convention or the construction
15 of a statute involving a constitutional convention.

16 (b) Declarations of rights, as herein provided for, may be
17 obtained by means of a pleading seeking that relief alone, or
18 as incident to or part of a complaint, counterclaim or other
19 pleading seeking other relief as well, and if a declaration of
20 rights is the only relief asked, the case may be set for early
21 hearing as in the case of a motion.

22 (c) If further relief based upon a declaration of right
23 becomes necessary or proper after the declaration has been
24 made, application may be made by petition to any court having
25 jurisdiction for an order directed to any party or parties
26 whose rights have been determined by the declaration to show

1 cause why the further relief should not be granted forthwith,
2 upon reasonable notice prescribed by the court in its order.

3 (d) If a proceeding under this Section involves the
4 determination of issues of fact triable by a jury, they shall
5 be tried and determined in the same manner as issues of fact
6 are tried and determined in other civil actions in the court in
7 which the proceeding is pending.

8 (e) Unless the parties agree by stipulation as to the
9 allowance thereof, costs in proceedings authorized by this
10 Section shall be allowed in accordance with rules. In the
11 absence of rules the practice in other civil actions shall be
12 followed if applicable, and if not applicable, the costs may be
13 taxed as to the court seems just.

14 (Source: P.A. 82-280.)

15 (735 ILCS 5/2-701.5 new)

16 Sec. 2-701.5. Declaratory judgment in an action involving
17 defamation, slander, or libel.

18 (a) Findings. The General Assembly finds that defamation,
19 slander, and libel can seriously damage a person's reputation
20 and significantly distort the integrity of the democratic
21 process. Defamatory, slanderous, and libelous statements
22 against a person expose the person to ridicule, contempt, or
23 reproach, and otherwise injure the person in the person's
24 business or occupation. The General Assembly further finds that
25 there are significant expenses and obstacles involved in

1 actions seeking to restore a person's reputation. It is the
2 intent of the General Assembly to expedite the process of
3 restoring a person's reputation following a defamatory,
4 slanderous, or libelous statement and to minimize the
5 litigation expenses of all parties. The State of Illinois
6 agrees with the U.S. Supreme Court's finding that "[t]he right
7 of a man to the protection of his own reputation from
8 unjustified invasion and wrongful hurt reflects no more than
9 our basic concept of the essential dignity and worth of every
10 human being - a concept at the root of any decent system of
11 ordered liberty." Rosenblatt v. Baer, 383 U.S. 75, 92 (1966).
12 There is a compelling state interest in (i) deterring the harm
13 caused to innocent persons by false statements, (ii) promoting
14 the vindication and protection of personal reputation, and
15 (iii) minimizing the judicial resources and costs that are
16 associated with restoring a person's reputation. The General
17 Assembly seeks to protect the constitutionally recognized
18 interest of a person in his or her reputation, as was discussed
19 by the Illinois Supreme Court in Troman v. Wood, which stated
20 that "[f]rom the outset it has been recognized that an
21 individual is entitled to a remedy 'for all injuries and wrongs
22 that he may receive in his person, property or character.'
23 (Const. of 1818, art. VIII, sec. 12; Const. of 1848, art. XIII,
24 sec. 12.) (In the most recent constitutions the word
25 'reputation' is substituted for 'character.' Const. of 1870,
26 art. II, sec. 19; Const. of 1970, art. I, sec. 12.) The freedom

1 of speech provisions of both our former and present
2 constitutions (Const. of 1870, art. II, sec. 4; Const. of 1970,
3 art. I, sec. 4) recognize the interest of the individual in the
4 protection of his reputation, for they provide that the
5 exercise of the right to speak freely shall not relieve the
6 speaker from responsibility for his abuse of that right. The
7 constitutionally recognized interest of the individual in his
8 reputation is not and can not be measured solely in terms of
9 monetary compensation. At the least, the individual has an
10 interest in preserving and restoring his reputation through an
11 authoritative and publicly known determination that an
12 injurious statement about him is in fact false. To foreclose or
13 restrict the availability of the judicial process as a means of
14 securing such a determination prevents the individual from
15 obtaining the effective vindication to which he is entitled."
16 Troman v. Wood, 62 Ill.2d 184, 194-195 (1975).

17 (b) Legislative intent. The cause of action for declaratory
18 judgment is hereby provided in this Section as an alternative
19 to a defamation action for damages for any person who believes
20 that his or her reputation has been damaged by a published
21 false statement of fact. This alternative action is intended
22 for the expeditious resolution with minimal costs of litigation
23 due to the elimination of issues unrelated to the question of
24 the truth or falsity of the statement at issue.

25 (c) Definitions. For purposes of this Section,

26 "Mass media" means, but is not limited to, a newspaper or

1 periodical, or any broadcast, cable, or satellite means of mass
2 communication, including an Internet website.

3 "Person" means a natural person.

4 (d) Action. Any person who has been defamed, slandered, or
5 libeled may bring an action for declaratory judgment pursuant
6 to Section 2-701. If an adverse party files a motion pursuant
7 to Section 15 of the Citizen Participation Act in an action,
8 then any person who is a party to the action may bring an
9 action for declaratory judgment alleging defamation, slander,
10 or libel pursuant to Section 2-701. An action for declaratory
11 judgment alleging defamation, slander, or libel shall be
12 brought by filing a verified complaint or other pleading
13 setting forth facts showing the following:

14 (1) that the defendant made a statement of fact
15 referring to the plaintiff that is damaging to the
16 plaintiff's reputation;

17 (2) that the statement was published; and

18 (3) that the statement was false.

19 If the statement at issue was published in writing, a copy of
20 the published statement must be attached to the complaint. The
21 provisions of this Section are in derogation of the common law.

22 (e) Pre-trial proceedings.

23 (1) Except for limitations on discovery as provided in
24 this Section, pre-trial proceedings are governed by the
25 Code of Civil Procedure and the Supreme Court Rules.

26 (2) A plaintiff shall be furnished, upon his or her

1 request, from a defendant that is a mass media entity with
2 a copy of each tape, film, or digital file of the alleged
3 defamatory, slanderous, or libelous statement, or if a
4 tape, film, or digital file is not available, any available
5 transcript of the alleged statement. A defendant that is a
6 mass media entity that has been served with a complaint
7 under this Section identifying the statement at issue must
8 preserve any tape, film, digital file, or transcript which
9 contains that statement.

10 (3) Discovery is severely restricted. No discovery may
11 take place without specific prior approval by the court in
12 writing, after a hearing in which the party requesting
13 discovery is able to demonstrate by clear and convincing
14 evidence to the court's satisfaction that there is a
15 compelling need for the particular information sought.
16 Discovery is specifically prohibited with regard to the
17 following matters due to their irrelevance:

18 (A) the status of the plaintiff;

19 (B) any malice, intention, knowledge,
20 recklessness, or other mental state of the defendant,
21 any agent of the defendant, or any employee of the
22 defendant pertaining to the publication of the
23 statement at issue.

24 (f) Affirmative defense. In addition to other common law
25 defenses which may be applicable, it is an affirmative defense
26 to an action for declaratory judgment alleging defamation,

1 slander, or libel that the allegedly false statement referring
2 to the plaintiff:

3 (1) appeared in a report of an official action or
4 proceeding or of a meeting open to the public that dealt
5 with a matter of public concern, if the report is accurate
6 and complete or a fair abridgment of the occurrence
7 reported; or

8 (2) was taken from remarks made by an identified
9 governmental official or by an identified candidate for
10 public office who has already filed his or her petitions of
11 candidacy, if the published statement is an accurate and
12 complete rendition of those remarks or a fair abridgment of
13 the statement.

14 (g) Trial proceedings. Trial proceedings are governed by
15 the Code of Civil Procedure and the Supreme Court Rules. The
16 plaintiff has the burden of proving by clear and convincing
17 evidence each of the allegations required to be pled in this
18 Section. No damages may be awarded to a plaintiff who is
19 granted a declaratory judgment that finds that the defendant
20 made a defamatory, slanderous, or libelous statement against
21 the plaintiff.

22 (h) Declaratory judgment; judicial declaration of falsity.
23 The judgment to be entered on behalf of a plaintiff who
24 prevails on his or her complaint alleging defamation, slander,
25 or libel shall be entitled to a "Judicial Declaration of
26 Falsity".

1 (i) Publication of a notice of a judicial declaration of
2 falsity.

3 (1) A plaintiff who prevails on his or her action filed
4 pursuant to this Section may petition the court for the
5 publication of a Notice of Judicial Declaration of Falsity
6 by a court-supervised method.

7 (2) Whether a Notice of Judicial Declaration of Falsity
8 shall be published, and if published the contents of the
9 notice, shall be determined by the court after a hearing
10 that considers the following matters:

11 (A) if the nature of the statement, parties, and
12 circumstances warrant, in the court's discretion, a
13 Notice being published;

14 (B) a notice shall contain only factual statements
15 which must pertain to the proceedings in which the
16 Judicial Declaration of Falsity is sought;

17 (C) a notice may refer to the statement found to be
18 false;

19 (D) a notice, consistent with the other criteria
20 under this paragraph (2), it shall be as brief as
21 possible;

22 (E) a notice shall be published at a time and in a
23 manner so that the greatest number of people who saw or
24 heard the false statement are likely to see or hear it;

25 (F) if requested by the plaintiff, the notice shall
26 indicate that it is a compulsory statement; otherwise,

1 that indication shall be left to the court's
2 discretion; and

3 (G) the notice may be ordered to be published more
4 than once if the statement found to be false was
5 published more than once.

6 (3) The court may determine that the Notice of a
7 Judicial Declaration of Falsity shall be published by a
8 medium of mass communication by purchase of time or space,
9 as for advertising. The medium shall be selected by the
10 court after a hearing in which the parties may present
11 their proposed choices. The court additionally shall
12 attempt to choose a medium as close in form to the medium
13 used by the defendant as possible. A court may order a mass
14 media defendant to publish the Notice of a Judicial
15 Declaration of Falsity in the defendant's own medium of
16 mass communication only if the mass media defendant
17 mutually agrees to such publication. In determining the
18 method or form of publishing the Notice of a Judicial
19 Declaration of Falsity, the court may, among other things,
20 take into account case law and stare decisis of the United
21 States Supreme Court and the Illinois Supreme Court dealing
22 with freedom of speech and freedom of the press.

23 (4) All expenses arising from the publication of a
24 Notice of a Judicial Declaration of Falsity ordered under
25 this Section shall be reviewed and approved by the court
26 and taxed against the defendant.

1 (5) Any order entered under this subsection (i) may be
2 enforced through the court's contempt powers.

3 (j) Bar on actions for damages. A plaintiff who files a
4 complaint for declaratory judgment action alleging defamation,
5 slander, or libel is thereafter barred from ever asserting any
6 other cause of action of any kind and from ever seeking damages
7 based upon the statements or conduct of the defendant which are
8 the subject of the action. No action for damages no matter how
9 designated may be filed concurrently or joined with an action
10 for declaratory judgment action alleging defamation, slander,
11 or libel.

12 (k) Statute of limitations. An action for declaratory
13 judgment action alleging defamation, slander, or libel shall be
14 commenced within one year next after the cause of action
15 accrued or within 30 days after a motion is filed pursuant to
16 Section 15 of the Citizen Participation Act, whichever is
17 later.

18 Section 10. The Citizen Participation Act is amended by
19 changing Section 15 and by adding Section 21 as follows:

20 (735 ILCS 110/15)

21 Sec. 15. Applicability.

22 This Act applies to any motion to dispose of a claim in a
23 judicial proceeding on the grounds that the claim is based on,
24 relates to, or is in response to any act or acts of the moving

1 party in furtherance of the moving party's rights of petition,
2 speech, association, or to otherwise participate in
3 government. However, this Act does not apply to any pleading
4 filed in accordance with Section 2-701.5 of the Code of Civil
5 Procedure.

6 Acts in furtherance of the constitutional rights to
7 petition, speech, association, and participation in government
8 are immune from liability, regardless of intent or purpose,
9 except when not genuinely aimed at procuring favorable
10 government action, result, or outcome.

11 (Source: P.A. 95-506, eff. 8-28-07.)

12 (735 ILCS 110/21 new)

13 Sec. 21. Motion for declaratory judgment.

14 A natural person who is a party to an action in which an
15 adverse party filed a motion pursuant to Section 15 may file a
16 declaratory judgment action alleging defamation, slander, or
17 libel, in accordance with Section 2-701.5 of the Code of Civil
18 Procedure, so long as the person files the declaratory judgment
19 action within 30 days after the moving party filed the Section
20 15 motion.

21 A party who files a declaratory judgment action pursuant to
22 this Section and Section 2-701.5 shall voluntarily dismiss all
23 claims that are the subject of the motion filed pursuant to
24 Section 15. The court shall also dismiss any motions filed
25 pursuant to Section 15 against the party who filed the action

1 for a declaratory judgment under this Section.

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.".